

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

MELISSA D. CLUTTER JOHNSON,

Plaintiff,

vs.

Civil Action No. 5:15-cv-12980

MARCIA A. KHALIL, M.D., and  
GINA JEREZA-HARRIS, M.D., and  
COMMUNITY HEALTH SYSTEMS, INC.,  
d/b/a ACCESS HEALTH-OB/GYN

Defendants.

**NOTICE OF REMOVAL**

Now comes the United States of America (“United States”) and pursuant to 28 U.S.C. § 1446, gives notice of the removal of the above-styled action from the Circuit Court of Raleigh County to the United States District Court for the Southern District of West Virginia at Beckley. As grounds for removal the United States represents as follows:

1. Marcia A. Khalil, M.D., Gina Jereza-Harris, M.D., and Community Health Systems, Inc., d/b/a/ Access Health OBGYN, were named as defendants in a civil action filed in the Circuit Court of Raleigh County, West Virginia, on or about August 10, 2015, bearing Civil Action No. 15-C-752.

2. The complaint alleges, generally, that defendants Marcia A. Khalil, M.D., Gina Jereza-Harris, M.D., and Community Health Systems, Inc., d/b/a Access Health Associates In OBGYN, engaged in tortious conduct while providing health care services to plaintiff Melissa D. Clutter Johnson. In addition, plaintiff Melissa D. Clutter Johnson also alleges various types of damages which she claims were proximately caused by that alleged tortious conduct. Copies of the complaints and other documents served upon defendants Marcia A. Khalil, M.D., Gina Jereza-

Harris, M.D., and Community Health Systems, Inc., d/b/a Access Health Associates In OBGYN, are attached collectively as Exhibit A to this Notice of Removal.

3. At all times relevant to the complaint, Community Health Systems, Inc., d/b/a Access Health Associates In OBGYN and its employees, including Marcia A. Khalil, M.D., and Gina Jereza-Harris, M.D., were “deemed” employees of the United States for purposes of the Public Health Service (“PHS”) Act, 42 U.S.C § 233(h), as amended by the Federally Supported Health Centers Assistance Act of 1992, as amended in 1995. (“the Act”). See Exhibit B attached to this Notice of Removal.

4. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b), 2671-2680, provides the exclusive remedy for alleged tort claims related to medical and related services performed by employees of deemed entities while acting in the scope of their employment. 42 U.S.C. § 233(a).

5. The Attorney General, acting through his designee, the United States Attorney for the Southern District of West Virginia, R. Booth Goodwin II, has certified that the actions of Community Health Systems, Inc., d/b/a Access Health Associates In OBGYN and its employees, including Marcia A. Khalil, M.D., and Gina Jereza-Harris, M.D., as set forth in the complaint, were within the scope of their employment. See Exhibit C to this Notice of Removal.

6. Upon said certification, this action is properly removed, without bond, at any time before trial to the United States District Court for the district and division in which the action is pending. 28 U.S.C. § 2679(d)(2); 42 U.S.C. § 233(c).

7. The removal of this civil action is properly effected by the filing of a notice of removal in the district court. 28 U.S.C. §1446; 42 U.S.C. § 233.

8. A copy of the Raleigh County Circuit Court docket sheet relating to this action is attached as Exhibit D to this Notice of Removal.

WHEREFORE, based upon the foregoing, the United States respectfully submits that this action is properly removed from the Circuit Court of Raleigh County, West Virginia, to the United States District Court for the Southern District of West Virginia at Beckley.

Respectfully submitted,

**R. BOOTH GOODWIN II**  
**United States Attorney**

**s/Fred B. Westfall, Jr.**  
WV State Bar No. 3992  
Assistant United States Attorney  
Attorney for United States  
P.O. Box 1713  
Charleston, WV 25326  
Phone: 304-345-2200  
Fax: 304-347-5443  
E-mail: [fred.westfall@usdoj.gov](mailto:fred.westfall@usdoj.gov)

**CERTIFICATE OF SERVICE**

I, FRED B. WESTFALL, JR., Assistant United States Attorney for the Southern District of West Virginia, hereby certify that on September 8, 2015, I electronically filed this **NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

R. Dean Hartley  
Mark R. Staun  
David B. Lunsford  
Hartley & O'Brien, PLLC  
The Wagner Building  
2001 Main Street, Suite 600  
Wheeling, WV 26003  
Counsel for plaintiff

I, FRED B. WESTFALL, JR., Assistant United States Attorney for the Southern District of West Virginia, hereby certify that on September 8, 2015, I also served this NOTICE OF REMOVAL upon the following person by United States Mail, postage prepaid:

Paul Flanagan, Circuit Clerk  
Raleigh County Judicial Center  
222 Main Street  
Beckley, WV 25801

**s/Fred B. Westfall, Jr.**  
WV State Bar No. 3992  
Assistant United States Attorney  
Attorney for United States  
P.O. Box 1713  
Charleston, WV 25326  
Phone: 304-345-2200  
Fax: 304-347-5443  
E-mail: [fred.westfall@usdoj.gov](mailto:fred.westfall@usdoj.gov)